

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of

AT&T MOBILITY LLC
1055 Lenox Park Blvd. NE
Atlanta, GA 30319
404-236-7895

Complainant,

v.

IOWA WIRELESS SERVICES, LLC
4135 NW Urbandale Drive
Urbandale, IA 50322

Defendant.

Proceeding No 15-259

File No. EB-15-MD-007

AT&T MOBILITY LLC'S RESPONSE TO IOWA WIRELESS SERVICES, LLC'S
APPLICATION FOR REVIEW

James F. Bendoragel, Jr.
Paul J. Zidlicky
Kyle J. Fiet
Emily C. Watkins
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8000
(202) 736-8711 (fax)

Counsel for AT&T Mobility LLC

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INTRODUCTION

Pursuant to 47 C.F.R. § 1.115(d), AT&T Mobility LLC (“AT&T”), respectfully submits this response to the Application for Review (“Application”) filed by Iowa Wireless Services, LLC (“iWireless”) of the Enforcement Bureau’s Letter Ruling dated December 18, 2015 (“Letter Ruling”) that obligates the parties to continue providing data and voice roaming services to one another during the pendency of the Formal Complaint proceeding brought by AT&T against iWireless at the same rates that were in effect from 2008 through most of 2015.¹ The Application should be denied.

First, absent from iWireless’ Application is any mention of iWireless’ proposed [BEGIN
CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

Contrary to its principal argument, iWireless does not have *carte blanche* authority to impose whatever interim rate it may choose during the pendency of this Complaint proceeding. Rather, the Commission has authority under the Communications Act, the Commission’s Rules and the *Data Roaming Order*² to direct that iWireless and AT&T continue to provide data and voice roaming service to one another at rates that preserve the *status quo* and protect the public interest.

¹ AT&T notes that although applications seeking review of interlocutory actions in hearing proceedings are limited to five pages, iWireless’ Application is 15 pages long. 47 C.F.R. § 115(f). To the extent that iWireless’ submission is permitted, AT&T likewise should be permitted an adequate opportunity to respond.

² See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Radio Service Data* (WT Docket No. 05-265), Second Report and Order, 26 FCC Rcd 5451 at ¶ 87 (2011) (the “*Data Roaming Order*”).

Second, the Commission properly exercised its authority to preserve the *status quo* and protect the public interest without deciding the merits of the underlying roaming dispute or engaging in rate setting. Indeed, the Commission expressed no view “on the merits of the parties’ dispute” and established no fixed rate. Instead, Commission Staff directed the parties to continue exchanging roaming traffic pursuant to the rates paid under their Agreement from 2008 through most of 2015, while explaining that this interim relief may be subject to a retroactive true up in accordance with a judgment on the merits at the conclusion of the Complaint proceeding.³ The Letter Ruling thus (i) preserves the *status quo* by directing both parties, on an interim basis, to continue charging the same voice and data roaming rates the parties paid one another from July 2008 through the majority of 2015, and (ii) protects the public interest by ensuring that AT&T and its customers are not held hostage by iWireless’ unilateral effort to collect a windfall while the Commission considers the merits of the underlying dispute.

Finally, the interim remedy reflected in the Letter Ruling is more than fair to iWireless and will cause iWireless no unfair prejudice. The Letter Ruling adopts (i) the voice roaming rates proposed by iWireless, and (ii) a data roaming rate that is decidedly more favorable to iWireless than the *status quo* because it requires AT&T to pay iWireless [BEGIN
CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] for data roaming as the rate AT&T was paying under the parties’ Agreement when the Letter Ruling was issued. Indeed, the Letter Ruling grants iWireless the benefit of the rates in an Agreement negotiated in 2007, even though rates for voice and data roaming services have been in decline for the past several years. In all events, there is no actual prejudice to iWireless from the Letter Ruling because

³ Letter Ruling 1-2.

Commission Staff explained that this interim relief is “subject to a possible ‘true-up,’ . . . in accordance with a judgment on the merits at the conclusion of this proceeding.”⁴

BACKGROUND

Since January 1, 2006, AT&T and iWireless (or their predecessors) have been parties to a bilateral roaming agreement (the “Agreement”).⁵ Under that Agreement, AT&T was paying a data roaming rate of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] and an effective voice roaming rate of approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] per minute of use (“mou”).⁶ These rates were [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL] As discussed in AT&T’s Amended Formal Complaint, the market rates for roaming services have declined significantly over the past few years.⁸ As a result, [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL]

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

⁴ *Letter Ruling* at 1-2.

⁵ See AT&T’s Amended Formal Complaint ¶ 17 (Dec. 23, 2015) (“Am. Compl.”); Declaration of Gram Meadors (“Meadors Decl.”) ¶ 9 (Dec. 23, 2015).

⁶ See Am. Compl. ¶¶ 2, 18 & n.46; Meadors Decl. ¶ 9 & n.8; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁷ See Am. Compl. ¶ 18; Meadors Decl. ¶ 9; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁸ See, e.g., Am. Compl. ¶¶ 15-16; Meadors Decl. ¶¶ 6-8, 44; Declaration of Jonathan Orszag (“Orszag Decl.”) ¶¶ 25-26 (Dec. 23, 2015).

⁹ See Am. Compl. ¶¶ 19-20; Meadors Decl. ¶ 10.

¹⁰ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END

CONFIDENTIAL]

[BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [END
CONFIDENTIAL].

¹¹ *Id.* ¶¶ 30-31; *see* [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL].

¹² Am. Compl. ¶¶ 31-32. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹³ Am. Compl. ¶ 37; Meadors Decl. ¶ 26; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹⁴ Am. Compl. ¶ 37; Meadors Decl. ¶ 26; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹⁵ Am. Compl. ¶ 38; Meadors Decl. ¶ 27; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

On October 2, 2015, iWireless [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

On October 8, 2015, iWireless stated that it would [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁶ [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹⁷ See Am. Compl. ¶ 38; Meadors Decl. ¶ 27; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹⁸ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

¹⁹ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

²⁰ [BEGIN CONFIDENTIAL] [REDACTED] [END
CONFIDENTIAL]

[REDACTED]
[REDACTED] [END
CONFIDENTIAL]

On October 20, 2015, AT&T filed its motion for interim relief, and requested the Commission to preserve the *status quo* by requiring the parties to continue providing voice and data roaming services in accordance with the terms reflected in the parties' Agreement [BEGIN
CONFIDENTIAL] [REDACTED] [END
CONFIDENTIAL]²² Soon thereafter, on November 9, 2015, an arbitral panel [BEGIN
CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]²³

On November 20, 2015, iWireless submitted its opposition to AT&T's request for interim relief. iWireless proposed to provide voice roaming services based on the rates [BEGIN
CONFIDENTIAL] [REDACTED]

²¹ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

²² AT&T's Motion for Interim Relief at 11 (Oct. 21, 2015).

²³ [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL] See iWireless' Sur-Reply to AT&T's Reply in Support of AT&T's Motion for Interim Relief at 17 (Dec. 7, 2015) ("iWireless' Sur-reply").

[REDACTED] [END CONFIDENTIAL]²⁴ With regard to data roaming services, iWireless proposed to increase the applicable rate from [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] In support of its position, iWireless argued, as it does here, that Commission Staff was powerless to do anything but to accept iWireless' terms.²⁵

On November 30, 2015, AT&T submitted a request for leave to file a reply brief that explained that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]²⁶ On December 7, 2015, iWireless objected to AT&T's submission but nevertheless submitted a sur-reply arguing that the Commission was obligated to accept iWireless' [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] data roaming proposal.²⁷

On December 8, 2015, Commission Staff accepted both parties' filings, and on December 18, 2015, Commission Staff issued a Letter Ruling granting AT&T's request for Interim Relief. More specifically, the Commission directed that the parties continue to exchange voice and data roaming services at the same rates, subject to a possible true-up, that had been in effect between the parties from [BEGIN CONFIDENTIAL] [REDACTED] [END

²⁴ See iWireless' Opposition to Interim Relief at 17 (Nov. 20, 2015) ("iWireless Opposition").

²⁵ *Id.* at 19 [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

²⁶ AT&T Reply in Support of Motion for Interim Relief at 2 (Nov. 30, 2015).

²⁷ iWireless' Surreply at 2.

CONFIDENTIAL]²⁸ Commission Staff made clear that it was not ruling on the merits of the parties' underlying dispute and reserved for future consideration the issue of whether the interim remedy would require a true up.²⁹

ARGUMENT

The Letter Ruling is an appropriate exercise of Commission Staff's delegated authority to preserve the *status quo* and protect the public interest pending resolution of the ongoing Complaint proceeding. Commission Staff properly exercised its delegated authority by directing the parties, on an interim basis, to exchange voice and data roaming services in accordance with the rates that were charged by the parties from 2008 through most of 2015. Contrary to iWireless' claim, Commission Staff did not engage in *ad hoc* rate setting or resolve the merits of this dispute based on an incomplete record. Finally, iWireless will suffer no prejudice from the Letter Ruling because the interim relief is more than fair to iWireless, which will continue to reap a windfall through the continued application of a **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** data rate and a **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** voice rate that were adopted in 2007 before the rates for data and voice roaming services had begun to decline significantly.

I. Commission Staff Acted Within Its Delegated Authority In Setting An Interim Rate Pending Resolution Of AT&T's Complaint.

iWireless' principal argument is that Commission Staff exceeded its authority and acted contrary to Commission policy by refusing to accept iWireless' proposed **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** rate for data roaming service.³⁰

²⁸ Letter Ruling at 1-2.

²⁹ *Id.*

³⁰ *See* Application at 4-5.

According to iWireless, the only remedy open to the Commission was to agree with whatever proposal iWireless made without regard to how that proposal compared to the longstanding *status quo* between the parties.³¹ In fact, iWireless goes so far as to contend that the Commission was obligated to bless any iWireless offer so long as AT&T “is in a financial position to pay the proffered interim rate.”³² iWireless’ argument should be rejected because the Commission has ample authority to preserve the *status quo* and protect the public interest pending further administrative review.³³

First, iWireless’ Application completely ignores that the Commission has authority under Section 4(i) of the Communications Act, 47 U.S.C. § 154(i), to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.”³⁴ As the Commission has noted, “[t]he Supreme Court has affirmed the Commission’s authority to impose interim injunctive relief, in the form of a standstill order, pursuant to Section 4(i).”³⁵ Thus, Section 4(i) “clearly empower[s] the Commission to act promptly to restrain, on a temporary or interim basis, apparent or prima facie

³¹ *Id.* at 5 (arguing that Commission “Staff disregarded the Commission established process” when it “ordered iWireless to provide service at a rate other than the rate iWireless proffered”).

³² *Id.* at 7 (arguing that iWireless’ proposal was proper because AT&T had “wireless revenues of *over \$18 billion dollars*”).

³³ iWireless argues that there is no role for Commission Staff and that refusal to rubberstamp its proposed interim data roaming rate “violates the fundamental premise of the data roaming rule which ‘allows host providers to control the terms and conditions of proffered data roaming arrangements.’” Application at 5-6 (quoting *Data Roaming Order* ¶ 33). In making this argument, however, iWireless truncates the language of paragraph 33, and thereby alters the Commission’s meaning, which is that a host provider’s authority over terms is subject to “**a general requirement of commercial reasonableness.**” *Data Roaming Order* ¶ 33 (emphasis added to language omitted by iWireless).

³⁴ 47 U.S.C. § 154(i).

³⁵ Second Report and Order, *Revision of the Commission’s Program Carriage Rules; Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage*, 26 FCC Rcd. 11494, ¶ 26 (2011) (“*2011 Program Carriage Rules Order*”) (citing *United States v. Southwestern Cable Co.*, 392 U.S. 157, 181 (1968)).

violations of the Act and our rules and orders.”³⁶ The Letter Ruling is expressly made pursuant to Section 4(i) of the Communications Act.³⁷

Second, Commission Staff’s authority is not inconsistent with paragraph 80 of the Commission’s *Data Roaming Order*. In paragraph 80, the Commission noted that, in appropriate circumstances, Commission Staff was authorized to (i) direct “the host provider to provide data roaming on its proffered terms, during the pendency of the dispute, subject to possible true-up once the roaming agreement is in place,” and (ii) “if the Commission [S]taff chooses to require submission of final offers . . . , order the host provider to provide data roaming in accordance with its final offer, subject to possible true-up.”³⁸ These two options, however, do not exhaust the remedies available to Commission Staff. Indeed, paragraph 80 goes on to provide that the Commission Staff is authorized to respond to “move expeditiously with fines, forfeitures, and

³⁶ Report and Order, *Implementation of the Telecommunications Act of 1996 Amendment of Rules Governing Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers*, 12 FCC Rcd. 22497, ¶ 159 (1997) (“1997 Complaint Rules Order”). See also Memorandum Opinion and Order, *Bell System Tariff Offerings of Local Distribution Facilities For Use By Other Common Carriers*, Docket No. 19896, 45 F.C.C.2d 261, 263 (1974) (holding that an interim order which “merely direct[s] that the status quo be maintained” pending the resolution of a complaint proceeding is a valid exercise of the “broad authority granted by Sections 4(i) and 4(j) of the Communications Act” and is not “prescriptive” ratemaking under Section 205); Memorandum Opinion and Order, *AT&T Corp. v. Ameritech Corp.*, 13 FCC Rcd. 14508, ¶ 14 n.45 (1998) (“*Ameritech Standstill Order*”) (noting that Commission’s authority to award interim relief includes power to restrict ongoing conduct).

³⁷ Letter Ruling at 2 (citing 47 U.S.C. § 154(i)). The Enforcement Bureau is “the primary Commission entity responsible for enforcement of the Communications Act and other communications statutes, the Commission’s rules, Commission orders and Commission authorizations,” and therefore is authorized through delegated authority to issue an order providing such relief. 47 C.F.R. §§ 0.111, 0.311. At least one other Commission Bureau, with similar delegated authority, has issued a standstill order. See, e.g., Order on Reconsideration, *Time Warner Cable*, 21 FCC Rcd. 9016, ¶ 34 (Media Bureau 2006).

³⁸ *Data Roaming Order* ¶ 80. This permissive language is repeated in the *Declaratory Ruling*, which provides that “To the extent a requesting provider requires data roaming services but believes a would-be host provider’s proffered terms and conditions are commercially unreasonable, we remind such providers that the Commission staff may, in appropriate circumstances, order a would-be host provider to provide data roaming services on its proffered terms during pendency of a dispute. Such services would be subject to possible true-up once a roaming agreement is in place.” See Reexamination of Roaming Obligations of Commercial Mobile Radio Service and Other Providers of Mobile Data Services (WT Docket No. 05-265), *Declaratory Ruling*, 29 FCC Rcd 15483, ¶ 27 (WTB 2014) (“*Declaratory Ruling*”) (citing *Data Roaming Order* ¶ 80).

other appropriate remedies, which should reduce any incentives to delay data roaming negotiations.”³⁹

Here, the Commission Staff had ample authority under Section 4(i) of the Act and the *Data Roaming Order* to adopt an “appropriate remed[y]” that directs the parties to “continue to provide roaming at [the parties’ contract] rates” and thereby “essentially preserve the status quo” and “serve the public interest.”

II. Commission Staff Did Not Engage In Rate-Making When It Preserved The *Status Quo* Pending Resolution of AT&T’s Complaint.

iWireless further contends that the Commission exceeded its authority by “engage[ing] in unlawful *ad hoc* ratemaking.”⁴⁰ According to iWireless, “the Commission in general and the Staff in particular have no authority at this early stage of the Complaint proceeding to engage in rate setting by imposing a rate to which iWireless has not agreed.”⁴¹ iWireless, however, is mistaken because neither the Commission nor Commission Staff has engaged in rate setting, *ad hoc* or otherwise.

To the contrary, in issuing the Letter Ruling, Commission Staff made clear that the interim relief did not reflect Commission Staff’s determination as to whether iWireless’ and/or AT&T’s rate proposals were commercially reasonable. Rather, the Letter Ruling was issued in response to AT&T’s request for emergency *interim* relief after iWireless had threatened to terminate service unless AT&T fully paid iWireless rates that would be [BEGIN
CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] than the existing rates

³⁹ *Id.* (emphasis added).

⁴⁰ Application 6.

⁴¹ Application at 8; *id.* at 8-12 (arguing that Commission Staff cannot engage in rate setting under Title II of the Communications Act).

under the Agreement.⁴² Given that threat, AT&T proposed that Commission Staff continue to apply the existing data roaming rate [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] even though AT&T had explained that this existing rate was excessive and no longer commercially reasonable.⁴³ In doing so, AT&T was *not* requesting a determination that the existing rates reflected in the parties' Agreement remained commercially reasonable under current market conditions; rather, AT&T sought interim relief to avoid the threat of termination which was being used to impose [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] rates by iWireless.⁴⁴

In the Letter Ruling, the Commission likewise made clear that it was not setting any rate and that the interim relief was temporary and may be “retroactively adjusted in accordance with a judgment on the merits at the conclusion of the proceeding.”⁴⁵ Indeed, to dispel any possible doubt, the Commission made clear that it “expressed no view at this juncture on the merits of the parties’ dispute” and instead sought only to “essentially preserve the status quo” while “serv[ing] the public interest.”⁴⁶ The Commission thus engaged in no rate-making and made no determination as to the merits of AT&T’s Complaint when it directed the parties to continue to provide roaming service at pre-existing contract rates during the pending administrative proceeding.

⁴² See AT&T’s Motion for Interim Relief at 5-6.

⁴³ AT&T Interim Motion at 9 & n.43 (citing AT&T’s Original Complaint (Oct. 21, 2015)).

⁴⁴ *Id.* at 9 [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁴⁵ Letter Ruling at 2.

⁴⁶ *Id.*

III. Commission Staff's Letter Ruling Is More Than Fair To iWireless.

Finally, iWireless complains that the Letter Ruling “does not maintain the *status quo*” because [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL] Application at 12 (emphasis in original). iWireless thus asserts that “the Staff has picked an arbitrary rate, without the benefit of a full record, without regard to the *status quo*.”⁴⁷ iWireless is wrong because the Commission fully explained the basis for directing the parties to provide service pursuant to the parties’ pre-existing rates.⁴⁸ In all events, iWireless has no basis to complain that the interim relief does not maintain the *status quo*.

The rates adopted by Commission Staff are not arbitrary. As explained by Commission Staff, the interim rates that it directed the parties to continue to charge were [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]. [END CONFIDENTIAL]⁴⁹ Specifically, the Commission directed the parties to “continue to provide roaming at these rates during the pendency of this proceeding.”⁵⁰ Commission Staff further explained that “[r]equiring iWireless to continue to

⁴⁷ *Id.*

⁴⁸ Nor can iWireless legitimately criticize Commission Staff because it “eschewed a lawful alternative.” Application at 12-13. iWireless never suggested that its Best and Final Offer was an appropriate interim rate. iWireless Sur-Reply at 11. [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Am. Compl. ¶¶ 62-71.

⁴⁹ Letter Ruling at 1.

⁵⁰ *Id.*

provide roaming at these rates while this dispute is pending will essentially preserve the status quo.”⁵¹

[illegible]

⁵¹ *Id.* at 2. iWireless contends that the Letter Ruling violates the *Declaratory Order* because “the rate in a previous agreement has no presumption of reasonableness with respect to future negotiations or agreements.” Application at 13. But AT&T did not contend that the rates set in 2007 in the parties’ Agreement were commercially reasonable in 2015 and 2016, but rather that they provided a means for preserving the *status quo* in the face of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] See AT&T’s Motion for Interim Relief at 9.

53 *Id.*

[REDACTED]

[END CONFIDENTIAL]

CONFIDENTIAL]

[END CONFIDENTIAL]⁵⁵ In all events, iWireless

can establish no lasting harm from the Letter Ruling because the interim relief is subject to possible true-up at the conclusion of the administrative proceedings.

CONCLUSION

For these reasons, iWireless' Application for Review of Commission Staff's Letter Ruling should be denied.

Respectfully submitted,

/s/ James F. Bendernagel, Jr.

James F. Bendernagel, Jr.
Paul J. Zidlicky
Kyle J. Fiet
Emily C. Watkins
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8000
(202) 736-8711 (fax)

Counsel for AT&T Mobility LLC

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⁵⁵ Am. Compl. ¶ 36 (citing New Data and Voice Contract rates Calculated in Accordance with Final Arbitral Award (submitted to Commission on Dec. 9, 2015)).